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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

Case No. 4:17-cv-05783-HSG

THE STATE OF OREGON, *et al.*,

Plaintiff-Intervenors,

**DEFENDANT-INTERVENOR  
LITTLE SISTERS OF THE  
POOR, ST. MARY'S HOME'S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY**

v.

ROBERT F. KENNEDY JR., in his Official Capacity as  
Secretary of the U.S. Department of Health & Human  
Services, *et al.*

Defendants,

and,

THE LITTLE SISTERS OF THE POOR, ST. MARY'S  
HOME, *et al.*,

Defendant-Intervenors.

1 The Little Sisters of the Poor St. Mary’s Home (Little Sisters) submit this notice of supplemental  
 2 authority as relevant to the pending motions to dismiss or, in the alternative, to grant summary  
 3 judgment (ECF Nos. 311, 366, 368, 370, 437).

4 On June 5, 2025, in *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review*  
 5 *Commission*, the Supreme Court unanimously held that Wisconsin violated the Religion Clauses of  
 6 the First Amendment by excluding Catholic Charities from a religious exemption from the state’s  
 7 unemployment insurance tax. No. 24-154, 2025 WL 1583299 (U.S. June 5, 2025). *CCB* confirms that  
 8 the Religion Clauses require judgment in favor of the Little Sisters, because this Court cannot  
 9 constitutionally provide the relief sought by the States, which is the reimposition of a prior version of  
 10 the Mandate that exempted churches but not the Little Sisters. *Little Sisters of the Poor Saints Peter*  
 11 *& Paul Home v. Pennsylvania*, 591 U.S. 657, 666, 672 (2020).

12 In *CCB*, Wisconsin offered an exemption from its unemployment compensation program for  
 13 “nonprofits ‘operated primarily for religious purposes.’” *CCB*, 2025 WL 1583299, at \*2. The  
 14 Wisconsin Supreme Court found that Catholic Charities Bureau did not qualify for the exemption  
 15 because it does not “engage in proselytization” or “serve only Catholics.” *Id.* The U.S. Supreme Court  
 16 unanimously reversed, with Justice Sotomayor’s opinion for the Court holding that the exemption  
 17 denial violated “[t]he clearest command of the Establishment Clause’ ... that the government may  
 18 not ‘officially prefe[r] one religious denomination over another’ by ‘differentiating between religions  
 19 based on theological lines.’” *Id.* at \*2, \*5. The Court further held that this discrimination did not  
 20 withstand strict scrutiny, in part because the lines drawn by the program were “vastly underinclusive  
 21 when it comes to ensuring unemployment coverage for its citizens.” *Id.* at \*8.<sup>1</sup>

22 This decision reaffirms the Little Sisters’ argument that the Mandate—the one the plaintiff States  
 23 ask this Court to re-impose—unconstitutionally discriminates between religions, triggering strict  
 24 scrutiny under the First Amendment. *See* ECF No. 437 at 8-9; ECF No. 370 at 22-23. In *CCB*, the  
 25 Catholic diocese was exempt, but Catholic Charities was not, because it engaged in service to those in  
 26 need. *See CCB*, 2025 WL 1583299, at \*15 (Thomas, J., concurring). Like the Wisconsin program, the  
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28 <sup>1</sup> The United States participated in the case as amicus in support of CCB.

1 Mandate the States ask this Court to reimpose offers an exemption to some religious groups, but not  
2 others. The prior Mandate exempted “churches, their integrated auxiliaries, and conventions or  
3 associations of churches, as well as ... *the exclusively religious activities* of any religious order.” 78  
4 Fed. Reg. 39,870, 39,874 (July 2, 2013) (emphasis added). But under the prior Mandate, the Little  
5 Sisters’ service to the elderly poor does not constitute exclusively religious activities. *See Little Sisters*  
6 *of the Poor Saints Peter & Paul Home*, 591 U.S. at 666. The Little Sisters’ faith “requires provision  
7 of charitable services,” rather than the exclusively religious activities envisioned by the Mandate’s  
8 prior exemption. *CCB*, 2025 WL 1583299, at \*6. The Little Sisters’ eligibility for the prior exemption  
9 thus “turns on inherently religious choices ... not “secular criteria.”” *Id.* at \*7. Because the Mandate’s  
10 prior exemption “excludes religious organizations from an accommodation” based on their decisions  
11 to serve the elderly poor and not to be run by a church, the Mandate “imposes a denominational  
12 preference by differentiating between religions based on theological choices.” *Id.* at \*7-8. It must  
13 therefore withstand strict scrutiny.

14 *CCB* also bears on the application of strict scrutiny. In *CCB*, the Supreme Court held that  
15 Wisconsin’s line-drawing was not “narrowly tailored to advance” its interests in “ensuring  
16 unemployment coverage for its citizens” and in “avoid[ing] entangling the state with employment  
17 decisions” regarding ministers. *Id.* at \*8. The Court held that Wisconsin’s rule was both “vastly  
18 underinclusive” and “overinclusive.” *Id.* at \*8-9.

19 Wisconsin’s mandate was “vastly underinclusive” because it offered exemptions for “over 40  
20 forms of ‘employment,’” and some of those exemptions “cover[ed] religious entities that provide  
21 charitable services in a similar manner to petitioners.” *Id.* at \*8. The same is true here. The Mandate  
22 offers exemptions to businesses employing millions of American workers. ECF No. 370 at 4. Those  
23 employers include churches ministering to the elderly poor but who are exempt “because the work is  
24 done directly by the church itself or its ministers, rather than by a separate nonprofit organization  
25 controlled by the church.” *CCB*, 2025 WL 1583299, at \*8. Thus, the prior Mandate suffers from the  
26 same kind of underinclusivity as the religious exemption in *CCB*.

27 *CCB* held that Wisconsin’s interest in limiting its exemption to ministerial employees was  
28 overinclusive because it could not “explain why it declined to craft an exemption limited to employees

1 who are in fact tasked with inculcating religious doctrine.” *Id.* The prior Mandate similarly exempted  
 2 churches as employers without differentiating between employees. 78 Fed. Reg. at 39,874.  
 3 Wisconsin’s church exemption and the Mandate’s church exemption are both overinclusive because  
 4 they “function[ ] at an organizational level, covering both the janitor and the priest in equal measure.”  
 5 *CCB*, 2025 WL 1583299, at \*8.

6 Now that the Supreme Court has unequivocally ruled that the type of system the States seek is  
 7 unconstitutional, this Court should enter judgment against all the States’ claims and bring this 8-year-  
 8 old lawsuit to a close without further delay.

9 Dated: June 10, 2025

Respectfully submitted,

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 11 /s/ Mark L. Rienzi

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